

TED C. FINDEISS

IBLA 82-210

Decided June 30, 1982

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring acceptance of stipulations as a condition to issuance of oil and gas lease U-47616.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Stipulations -- Secretary of the Interior

The Secretary of the Interior may require an oil and gas lease applicant to accept stipulations reasonably designed to protect environmental and other land use values as a condition precedent to the issuance of a lease. Where the recommendations to impose stipulations on the lease are based on the need to protect bighorn sheep habitat in an area where it is hoped that these animals will be reestablished, the imposition of protective stipulations will be affirmed.

APPEARANCES: Steven H. Findeiss, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ted C. Findeiss has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), issued November 4, 1981, which required the acceptance of "Wilderness Protection Stipulations" as a condition to issuance of the lease.

The BLM decision, in part, states the following:

The National Environmental Policy Act of 1969 declared a national policy to encourage productive and enjoyable harmony

between man and his environment and required all agencies of the Federal Government to include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official. Therefore, an oil and gas environmental analysis has been prepared for lands within the area administered by the Richfield District Office, Bureau of Land Management.

The decision further states that part of the lands in the subject oil and gas lease offer are within the proposed Hondo primitive area, and area designated for reintroduction of the desert bighorn sheep. On December 7, 1981, appellant filed a timely notice of appeal, followed by a statement of reasons. Appellant contends that the Wilderness Act of 1964 and Federal Land Policy and Management Act of 1976, "specifically provides for oil and gas exploration to take place even within roadless areas of outstanding recreational or wilderness character at least through 1983." Appellant further contends that the aforementioned Acts apply to any and all public lands, and that the BLM decisions are contrary to the intent of Congress. In addition appellant states that the environmental analysis upon which BLM based its decision is flawed, because it does not address "the benefits to the public of the proposed action (oil and gas leasing, exploration and production)." Rather, appellant contends,

it bases its assessment of possible adverse consequences not on probability of certain levels of damage occurring for certain levels of production, but on the harmful effects of oil, gas and drilling fluid once outside their normal containments. Such an analysis is wholly inadequate as a tool to determine the best interest of the public.

[1] Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960). Accordingly, the Secretary has the authority to impose stipulations or refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral leasing laws. Id. However, a decision to impose stipulations or refuse to lease land must be supported by facts of record that the action is required in the public interest. Tucker and Snyder Exploration Co., Inc., 51 IBLA 35 (1980). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981); Dell K. Hatch, 34 IBLA 274 (1978), and cases cited therein.

In the Oil and Gas Leasing Environmental Analysis Record, prepared by Richfield District Office, BLM, the Hondo primitive area is described as

[R]emote, comparatively roadless and for the most part lacks man caused disturbances. Factors are ideal for re-establishment of Desert Bighorn Sheep(24). These areas were historically the home of bighorn sheep. This animal is one of the nations most sought after big game animals. It apparently needs solitude for its existence and there are very few places left in Utah or the nation which has areas which meet the criteria needed for a productive Bighorn Sheep herd.

The Board has held that the protection of the habitat of a rare or valuable species of animal is in the public interest, Placid Oil Co., 58 IBLA 294 (1981). In Placid Oil Co., supra, the Board affirmed a decision of the New Mexico State Office, which rejected the appellant's oil and gas lease offers under circumstances apparently identical to those in the instant case. See also Rilite Aggregate Co., 26 IBLA 197 (1976), in which a mineral lease application was also rejected to protect bighorn sheep habitat.

Appellant has failed to provide compelling reasons for modification of the BLM decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

